

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RICHARD BOHANNON,	:	
	:	NO. 1:01-CV-00463
Petitioner,	:	
	:	
	:	ORDER
v.	:	
	:	
ERNIE MOORE,	:	
	:	
Respondent.	:	
	:	

Proceeding pro se, Petitioner Richard Bohannon ("Bohannon") filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 against Respondent Harry Russell ("Russell"), Warden of the Lebanon Correctional Institution (doc. 1). He claims that numerous errors and constitutional violations deprived him of a fair trial. In his return of writ (doc. 3), the Respondent contends that the instant petition is time barred under the statute of limitations imposed by 28 U.S.C. § 2244(d) and that Bohannon procedurally defaulted a number of his claims in the state courts. On March 18, 2004, the assigned Magistrate Judge issued a Report and Recommendation (doc. 11) recommending that the petition not be dismissed as time barred and that the action should be stayed pending exhaustion of his state post-conviction remedies. The Magistrate Judge also recommends that a certificate of appealability should not enter in this case and that this Court find, pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this

Order could not be taken in good faith. The parties were provided proper notice of the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(C), including notice that failure to file timely objections to the Report and Recommendation timely would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Neither party has filed any objections thereto within the prescribed time, rendering the matter ripe for decision.

Pursuant to 28 U.S.C. § 636(b), the Court has reviewed the Magistrate Judge's conclusions de novo, and it finds them to be thoughtful and proper. The Court agrees that Bohannon's petition was timely filed, taking into account the tolling period during which Bohannon could have filed an appeal from the Ohio Supreme Court's denial of his motion for delayed appeal with the United States Supreme Court. See Abela v. Martin, 348 F.3d 164, 172-73 (6th Cir. 2003) (en banc). The Court also agrees that requiring the Petitioner to present his newly-discovered evidence claim to the state courts first for review is proper and that a stay permitting him to do so is equally proper. See Hargrove v. Brigano, 300 F.3d 717, 719-20 (6th Cir. 2002). Finally, the Court agrees that "jurists of reason" would find this procedural ruling undebatable and that, as a result, issuance of a certificate of appealability would be improper and that no appeal thereof could be taken in good faith. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000).

Accordingly, the Report and Recommendation (doc. 11) is ADOPTED IN ITS ENTIRETY. The instant cases is hereby administratively STAYED AND TERMINATED on this Court's active docket pending Petitioner's exhaustion of his state law remedies. Issuance of a certificate of appealability of this Order pursuant to 28 U.S.C. 2253(c) is DENIED. The Court hereby CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order may not be taken in good faith; leave to proceed in forma pauperis on appeal is therefore DENIED.

SO ORDERED.

Dated: June 16, 2004

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge